

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3426 OF 2016 IN
FIRST APPEAL ST. NO. 2930 OF 2016

The Executive Engineer
Medium Project Division
Osmanabad, Dist. Osmanabad

Applicant

Versus

1. Pandharinath s/o Ramrao Nalwade
Deceased through LRs
- 1-A Mandodhari w/o Pandharinath Nalwade
age 76 years, occ. household
r/o Lanjeshwar, Tq. Bhoom
Dist. Osmanabad
- 1-B Sharda w/o Arun Patil
age 53 years, occ. agril
r/o Shani Mandir, Beed
Tq. & Dist. Beed
- 1-C Sunanda w/o Arun Autade
age 47 years, occ. agril
r/o Laxmi Nagar, Bhoom
Tq. Bhoom, Dist. Osmanabad
2. Arun s/o Pandharinath Nalwade
age major, occ. agril
3. Atul so Pandharinath Nalwade
age major, occ. agril
4. Suhas s/o Pandharinath Nalwade
age major, occ. agril
All r/o Lanjewar
Tq. Bhoom, Dist. Osmanabad
5. The State of Maharashtra
Through the Collector,
Osmanabad

Respondents

Mr. P.G. Rodge, advocate for applicant.
Mr. S.P. Deshmukh, AGP for respondent no. 5.
Mr. A.N. Nagargoje, advocate for respondents 2 to 4.

WITH
CIVIL APPLICATION NO. 3428 OF 2016 IN
FIRST APPEAL ST. NO. 2936 OF 2016

The Executive Engineer
Medium Project Division
Osmanabad
Dist. Osmanabad

Applicant

Versus

1. Kalyan s/o Dhondiba Khose
age major, occ. agril
r/o Lanjeshwar
Tq. Bhoom, Dist. Osmanabad

2. The State of Maharashtra
Through the Collector,
Osmanabad

Respondents

Mr. P.G. Rodge, advocate for applicant.
Mr. S.P. Deshmukh, AGP for respondent no. 2.
Mr. A.N. Nagargoje, advocate for respondent no. 1.

WITH
CIVIL APPLICATION NO. 3430 OF 2016 IN
FIRST APPEAL ST. NO. 2933 OF 2016

The Executive Engineer
Medium Project Division
Osmanabad
Dist. Osmanabad

Applicant

Versus

1. Kakasaheb Kallyanrao Khose
age major, occ. agril
r/o Lanjeshwar, Tq. Bhoom

Dist. Osmanabad

2. The State of Maharashtra
Through the Collector,
Osmanabad

Respondents

Mr. P.G. Rodge, advocate for applicant.
Mr. S.P. Deshmukh, AGP for respondent no. 2.
Mr. A.N. Nagargoje, advocate for respondent no. 1.

WITH
CIVIL APPLICATION NO. 3433 OF 2016 IN
FIRST APPEAL ST. NO. 2939 OF 2016

The Executive Engineer
Medium Project Division
Osmanabad
Dist. Osmanabad

Applicant

Versus

1. Pandurang Bhanudas Khose
age major, occ. agril
r/o Lanjeshwar
Tq. Bhoom, Dist. Osmanabad

2. Draupadi Bhanudas Khose
Deceased through LR respondent no. 1.

3. The State of Maharashtra
Through the Collector,
Osmanabad

Respondents

Mr. P.G. Rodge, advocate for applicant.
Mr. S.P. Deshmukh, AGP for respondent no. 2.
Mr. A.N. Nagargoje, advocate for respondent no. 1.

CORAM : M.S. SONAK, J.
DATE : 7th FEBRUARY, 2018

ORAL ORDER :

1. In these civil applications, delay of 1735, 1830, 1724 and 1732 days in instituting appeals against the judgment and award made by the reference Court is sought to be condoned.

2. In connected matters, by order dated 02.02.2018 in Civil Application no. 3305/2016 in First Appeal St. No. 2747/2016, this Court declined condonation of delay of 1672 days in institution of appeal. The reasons stated in the said civil application and reasons stated in the present civil application are almost similar. However, learned counsel for applicants points out that in such matters, the total amount of compensation involved was less than Rs.20,000/-.

3. In this case, applications for condonation of delay which are identical in all matters, comprise in all three paragraphs. In the first paragraph, quantum of delay is stated. Third paragraph is the prayer clause. The second paragraph reads as follows:

2. The applicant states that since the year 1999, the applicant's office is under the control of Godavari Marathwada Irrigation Development Corporation, Aurangabad (for short referred to as 'GMIDC'). Therefore, though the applicant office received certified copy of the impugned judgment and award on 7.2.2011, but the applicant has to move proposal before the Superintendent Engineer of the concerned Irrigation Circle Office and before the GMIDC for getting legal advice for filing appeal. Thereafter, the higher authorities after getting legal advice in the matter, issued directions to the applicant's office for filing appeal before this Hon'ble High Court. Thereafter, the applicant has to move proposal before the higher authorities for getting sanctioned court fees and

other expenses for filing appeal before this Hon'ble High Court and again further period was consumed and after getting necessary sanction, the applicant made arrangement of court fees and other expenses and thereafter, the applicant has filed this First Appeal as expeditiously as possible. In view of consumption of the said period during administrative and official procedure, the delay of 1732 days has been caused. The applicant submits that the delay caused in filing the appeal being bonafide and unintentional deserves to be condoned in the interest of justice. The applicant submits that the applicant has made out a prima-facie case in the main appeal by raising good grounds on facts and in law and hopes to succeed and in view of this also, the delay caused in filing the appeal deserves to be condoned in the interest of justice.

4. There is hardly any explanation and, in any case, does not constitute sufficient cause for inordinate delay of almost five years in instituting appeals. On the basis of such vague and unbelievable statement, such inordinate delay cannot be condoned.

5. Learned counsel for applicants submits that acquiring body is a impersonal agency and, this is the case where public funds are involved and therefore, indulgence should be extended. In the absence of any proper explanation and, taking into consideration the length of delay, it will not be appropriate to extend any indulgence. These are the matters where houses of claimants and land beneath them came to be acquired. Perusal of the impugned award does not show that some exorbitant compensation has been awarded. In any case, in the absence of any specific cause, it is not possible to condone such inordinate delay.

6. In Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr., reported in [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the land-losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In cases with which we are concerned, no such facts have been either pleaded or proved.

7. In Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors., reported in [2(2000) 6 SCC 133], the Hon'ble Supreme Court held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their

responsibility to act with reasonable expedition.

8. In Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors., reported in [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

9. In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [4(2012) 3 SCC 563], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the

government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

10. In Basawaraj and anr. vs. Special Land Acquisition Officer, reported in [(2013) 14 SCC 81] the Hon'ble Supreme Court went on to observe that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any

condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

11. The Division Bench of this Court in State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant-State.

12. Applying the aforesaid principles to the facts and circumstances of the present case, these applications for

condonation of delay are dismissed. There shall be no order as to costs.

13. As a consequence, appeals do not survive and same are also disposed of.

14. Pending civil application, if any, does not survive and stands disposed of.

15. If appellants have deposited any amount in this Court then, respondents-claimants are entitled to withdraw the same unconditionally. If the amounts are not deposited, respondents-claimants are at liberty to take out execution proceedings.

(M.S. SONAK, J.)

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